

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN L. MURPHY,

1:01-cv-06532-OWW-LJO-P

Plaintiff,

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS** (Doc. 61)

vs.

STEVEN CAMBRA, et al.,

**ORDER DENYING MOTION TO
DISMISS** (Doc. 53)

Defendants.

Plaintiff, Kevin L. Murphy ("plaintiff"), is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On April 21, 2005, the Magistrate Judge filed Findings and Recommendations herein which were served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty (30) days. On May 23, 2005, defendant filed objections to the Magistrate Judge's Findings and Recommendations, and on June 22, 2005, plaintiff filed a response to defendant's objections.

1 In accordance with the provisions of 28 U.S.C.
2 § 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a
3 de novo review of this case. Having carefully reviewed the
4 entire file, the Court finds the Findings and Recommendations to
5 be supported by the record and by proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. The Findings and Recommendations, filed April 21, 2005,
8 are ADOPTED IN FULL;

9 2. Defendant's unenumerated Rule 12(b) motion to dismiss,
10 filed November 19, 2004, is DENIED on the ground that exhaustion
11 occurred when prison officials failed to timely respond to
12 plaintiff's inmate appeal; and

13 3. Defendant shall file an answer within **thirty (30) days**
14 from the date of service of this order.

15
16 IT IS SO ORDERED.

17 **Dated: July 7, 2005**
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/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE